

# **UNITED STATES SMALL BUSINESS ADMINISTRATION**

**Fargo, ND**

**June 28, 2005**

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## PROCEEDINGS

[START RECORDING]

**MALE VOICE:** [Unintelligible] was 850,000, which is of course 100,000 over the 750 limit.

**MALE VOICE 1:** Right. That's what I was looking for next, yeah, the—

**MALE VOICE:** No but it's been enhanced to 1375.

**MALE VOICE 1:** 1375, so you're at the 1.3 mil mark right now, correct?

**MALE VOICE:** Yeah. The [unintelligible] enhanced SBI mark, which I understand is fairly rare.

**MALE VOICE 1:** Yeah. SBIR usually if they're looking and just as a side note here, I'm going to ask if you have anybody from DOD asked you about fast [unintelligible] on the SBIR?

**MALE VOICE:** This is fast track. My understanding is it's fast track.

**MALE VOICE 1:** Okay. Good [unintelligible] fast track, excellent.

**MALE VOICE:** Yeah.

**MALE VOICE 1:** DCAA, as I read through here it seems that a lot of things center around invoice 21, am I correct?

**MALE VOICE:** Invoice 22.

**MALE VOICE 1:** Invoice 22?

**MALE VOICE:** Mm-hmm.

**MALE VOICE 1:** Now at any time did, was there an educational process? I realize [unintelligible] bar 52 and the associated bar clauses, did DCAA sit down with you and educate about the cost accounting standards that are required underneath there? Or did they come in and simply say audit, here's your failings, and make repair or suffer restitution?

**MALE VOICE:** Actually no. When we first started [unintelligible] about two years ago before we started this SBIR, the program manager and the PCO, we were on the phone together, the program manager was in the plant and we sat down, we came up with a budget, we came up with a statement of worth, we came up with a timeframe, and I had to hire a [unintelligible] engineer, a very esoteric narrowly-known technology and basically I said okay I'm going to hire this guy. He was here at the time. They said go ahead and quit your job but start March 1. Within three days of that we got a call from DCAA that said we want to come up and look at your accounting

system before you start. They came up a couple days later. DCMA also said we want to come up and look at your accounting system before you start. Can you come up with your GNA and overhead as sort of [unintelligible] phase one, which I did. Gave it to DCMA. He gave the opinion a few days later that his independent calculation of the GNA and overhead was within about a percent or two on both counts of my calculations.

The DCAA guy came up, looked at my books. I don't know what he saw but he said based upon what I see here, I'm going to recommend to the Department of Defense that they not fund this contract. And I don't know why he started off on that foot. Of course that didn't go well. So yeah they started out bad, but then, you know, somebody finally told them that no, we're going to fund this contract, you teach him how to do the books.

So we had several sessions in that 2003 timeframe, but it took them three months to do that first audit, and I had already hired people who I was obligated to. I had already pushed the go button on making certain equipment which I was obligated to. So I had to carry that whole three months myself, just like I carried this whole five months myself.

**MALE VOICE:** Company A had during this time, did PCL or ACL give you a hard copy signature and date stamp on your submitted invoice 22 that they had accepted it?

**MALE VOICE:** No, because I never put invoice 22 into the WAP. That's an important point here. I never, unintentionally never put 22 into the WAP 'cause I knew it wouldn't fly and I knew once it hit the WAP if it didn't fly then indeed it would be very difficult to figure out how to fix it. So DCMA and myself and the PM and the PCO all specifically did not want to WAP it until we knew it was right. Now DCAA would never turn around and say okay we think you're doing this okay. No.

The PCO and myself, I mean the ACL and I yesterday came up with what we think is a plan that they'll accept and basically we're just going to say listen we tried to do what you, meaning the whole group if you will, said to do. We tried to do this right or at least how we were told to do it right. Forget anything happened. Let's go back. Let's sit everybody down in front of my QuickBooks for the last five months. We will go through receipt, receipt, receipt, receipt, paycheck, paycheck, paycheck, paycheck, every entry and see whether it's allowable or not allowable and create an invoice that will cover this [unintelligible].

Hopefully they'll sign off on that.

**MALE VOICE 1:** Okay. And I have one other question, and I'll be done, Company A, after this. At the onset of DCAA's conduct

of audit did they give you milestones for repair on your cost accounting system or did they simply identify the invoice as unacceptable and place you in the position of trying to identify the repairs?

**MALE VOICE:** They told me it was unacceptable and basically did not tell me how to repair it.

**MALE VOICE 1:** Did they present you with a final written audit report of that invoice?

**MALE VOICE:** It hasn't, no, that's, because it's only just been within the last couple of weeks that this has all happened.

**MALE VOICE 1:** Okay.

**MALE VOICE:** I couldn't expect them to turn around that kind of report in that short of a time.

**MALE VOICE 1:** Okay. Thank you.

**MALE VOICE:** Okay. You're welcome.

**MALE VOICE:** Thank you very much.

**MALE VOICE:** Thank you. [Unintelligible]

**MALE VOICE:** I'm looking forward to four people to be here in about ten minutes.

**MALE VOICE:** Okay.

**MALE VOICE:** Right.

**MALE VOICE:** Right.

**MALE VOICE:** Now I'm so glad Jim Larson's here, because that was all Greek to me too. [Laughter] Anyway to continue, because of his timeframe we had to get him on, and again we try and are as responsive as we can. We'll follow up with that with Jim's advice and counsel and determine what we can do to help. These are some examples of the kinds of things that we have been able to do with our office for small business, through hearings, through comments, through all the actions that we take. Just so that people understand that we go government-wide and the government is responsive in most cases.

More information is available at a number of web sites; [www.sba.gov](http://www.sba.gov) is probably the best one because it covers all the facets of what small business people need to learn because the SBA is not just about loans, it's about education. It's about advocacy. It's about regulation through our office. It's about training and you can go there and learn a lot more to help your business. To reach us you can of course go to the web site. You can call us at 1 (888) [unintelligible] and please use the 888 because if you call 1 (800) you get a dentist who doesn't like me. [Laughter]

And you can send us things by mail if you choose to be that way.

If you want to fax us there's our fax number, and like I said we're here to serve. And that's why I'm here in Fargo today.

Now before we take your testimony I always like to make sure that you know who from the federal government is here so you know who you're talking to before you start talking, and today I want to start with Dominique from the Department of Labor in Washington.

**DOMINIQUE SMITH:** I'd like to say good morning. My name is Dominique Smith and I'm from the Department of Labor, the Office of Small Business Programs. We're located in Washington, DC. The director in our office is Joe Demilla [phonetic]. I have also passed out documents and it's very informative [unintelligible] this package because it gives you information of what we do generally first with small businesses but then we also have inside information discussing the compliance assistance. The individual who oversees all of the compliance assistance activities is Mr. Thomas [unintelligible]. And what we do is that as far as outreaching to small businesses we like to let them know that we are here for them to assist them in any way possible as far as knowing our regulation and being in compliance with our regulations.

And we coordinate comments from SBA to our enforcement agencies. There are several enforcement agencies and some of those, our major ones, are wage and hours, OSHA, [unintelligible] and safety, ETA. Those are the ones that we get information from SBA as far as comments and we filter them down to our enforcement agencies. In addition to that we also try and find unique ways to get information out to our small businesses. There's a lot of information that's out there and small companies aren't getting that, so we outreach as well by attending conferences in addition to going to the outreach sessions with SBA.

And right now that's about it at this time.

**MALE VOICE:** I should say that Dominique's boss is a guy named Thomas Hicks who has been traveling with me all over the country. He's only missed one hearing in the last two years and that was when I did Concord, New Hampshire because the Secretary of Labor called him back because she did a one-day seminar for all the regulatory people from the department of labor on compliance assistance and demanded that anybody who had any activity in regulatory enforcement come to that hearing, and she personally presided. So they're to be commended because they're everywhere.

Now I'd like Melissa Marshall, who, this is her first hearing that she's attended from the EPA.

**MELISSA MARSHALL:** Oh, no it's not.

**MALE VOICE:** Well whatever, go ahead. I've never seen her

on the road before, so...

**MS. MARSHALL:** Well I have attended, let's see, last year, well anyway. [Inaudible] I am from the EPA's Washington office from the office of enforcement and compliance. In 1992 EPA combined its enforcement work and its compliance assistance work to integrate the two functions. We do have a small business office ombudsman at the EPA [unintelligible] I'm sorry. If you go to programs you can find it. I apologize. I don't [unintelligible].

Anyway I have been the [inaudible] office and obviously I'm very involved with the Small Business Administration. You know we care about what happens with respect to enforcement action. I do want to [inaudible] two things. First that [unintelligible] enforcement program has a number of programs that will give you assistance, and we actually take very few actions against small businesses and we have a number of programs that will for instance there's a small business [unintelligible] policy in which [inaudible] penalties [inaudible] and all the actions that we had against small businesses in the last year [inaudible] penalties, and they were all [inaudible] very minimal. They were—most of them were waived. Some of them were [inaudible].

But whenever we have a small business if you provide us with information [unintelligible] but if you give that [unintelligible] policies [unintelligible] our determining [inaudible] so we have programs in which you can come in and not face a penalty or, you know, if you do not want to do that then [inaudible] every single penalty policy we have and the Clean Water Act, you know, [unintelligible] all that, consideration for [unintelligible].

To access that information [unintelligible] EPA.gov/ [unintelligible] web site, programs and there are pages on the small business aspect. [Unintelligible] EPA and I think it's one of the [unintelligible] the case right now is that pollution is not an obvious thing [inaudible] it's a lot more insidious now, and so it doesn't have the same immediate [unintelligible]. One of our issues that [unintelligible] we need to determine if there are [unintelligible] to it that break the law then that information [unintelligible] we do listen to small businesses. [Unintelligible] a lot of these programs [unintelligible] working with them, you know, to the EPA [unintelligible] a lot of [unintelligible] assistance at the EPA over the web. We've worked with states and with business associations [unintelligible] site that are dedicated to [unintelligible] and it helps people learn what the regulations are, how to [unintelligible] the regulation, writing and the [unintelligible] office, but these sites are also [unintelligible] regulation so that we can tell them, you know, directly what their [unintelligible] so I am glad to be here. I've never been [unintelligible] it's beautiful. [Unintelligible].

**MALE VOICE:** Thank you Melissa. Richard?

**RICHARD HABURA:** My name's Richard Habura, district director of the United States Department of Labor [inaudible] division effort. First of all thank you for inviting me. I appreciate the opportunity to be here. The Wage and Hour Division recognized the important role that small businesses play in our economy and we're here, we are here to help you and give you client assistance as people have pointed out already. You probably heard about our recent efforts last year. It took a couple of years to change the old, 50-year-old overtime provisions [unintelligible] regulations and became effective last August, the 23<sup>rd</sup>, of 2004. And I encourage you to go to our web site at [www.wagehour.dol.gov](http://www.wagehour.dol.gov), click on fair pay. On that web site you can actually go to a seminar that is taught by experts within the agency about the changes in the regulations. And there's also an interactive portion of that web site where you can actually ask questions and people will get back to you and [unintelligible].

You can also call us at a 1 (866) 4US-WAGE. That's 1 (866) 487-9243 and contacts us directly. I'm not sure what, who's on the 1 (800) number, if you don't use 1 (866) I don't know if it's a dentist or a chiropractor or who it might be, but I think I'm going to try it and find out. After the meeting is over I'll stay a few extra minutes and answer any questions or concerns you may have in the direction [unintelligible] you have the web site. Thank you.

**MALE VOICE:** Thank you Richard. I should point out that what he's talking about in terms of the change in the regulation in terms of professionals resulted from a comment that we got from a small group up in Libertyville, Illinois that a wage and hour inspector came into this, it used to be a restaurant and it, the owner decided to expand because there was this trend for doing your own brewing on site and selling your own beer and so he went out and he bought the equipment, he hired a brewmaster and an assistant brewmaster and he started doing his business and he had these people working there and this inspector from wage and hour came in and said how much do you pay those guys.

He said I pay them a salary. They're professionals. Well a law that was passed in 1934 says you can't do that. You've got to pay them by the hour. You've got to pay them overtime. And the owner looked at the guy and said what do you mean? Why are you telling me how I have to run my business? That's the law. So he came to us after he had invested \$7,000 in attorney's fees and we went to Thomas Hicks, Dominique's boss, and he in turn went to the wage and hour people in Washington. They not only overturned that and said hey life has changed since 1934, but as Richard just pointed out they changed the regulation enforcement program so that it is now not the case that everybody's paid by the hour.

So all of you who are not paid by the hour can rest assured that you're safe from the department of labor. Other federal agency<sub>7</sub>

representatives here that I haven't met? This young lady first.

**ERICA:** My name is Erica. I'm with the Internal Revenue Service Taxpayer Advocate Service. And our office is an independent organization within IRS. [Inaudible] both individual and businesses when they have issues, tax issues, that they've been unable to—not been able to get results through [unintelligible] channels we step in and advocate [unintelligible] an assist them in getting the issue resolved. [Unintelligible] we're just here too.

**MALE VOICE:** Thank you. Yes sir?

**CHAD OVERTON [PHONETIC]:** Chad Overton [phonetic] with the [inaudible] unfortunately all our managers and compliance assistance specialists [inaudible] prevented from doing so. [Inaudible] second most hated profession after the IRS, so—[Laughter] Just to let you guys know that [inaudible] compliance assistance. Yes, a compliance assistance specialist in our office that does talks and does [unintelligible] small businesses [inaudible] ask questions. We also have a safety [inaudible] program that's [inaudible] small businesses and a consultation service, evaluate your workplace. Very simple in what we do [inaudible] if you want to know more, our web site, [www.osha.gov](http://www.osha.gov) or [inaudible] ask questions.

**MALE VOICE:** Thank you.

**LORI GILCHRIST:** I'm Lori Gilchrist with the Internal Revenue Service and I [inaudible].

**PATRICK STILLWELL:** Hi I'm Patrick Stillwell, I'm with the USDA [unintelligible] inspection service. I'm a case specialist out of the district office. The Minneapolis District regulates over 300 people [unintelligible] many of those are small [unintelligible] small staff but the two gentlemen here are enforcement officers from Bismarck, Fargo, [unintelligible] Minnesota and their job is created in part to provide assistance to these establishments.

**MALE VOICE:** Thank you all for being here, because that is a very important operation, what you do, and we get many comments. In fact, we had a hearing once wherein one of your people was criticized for the harsh treatment of the small business somewhere in America, I'm not going to say where. And your person had the good judgment not to say anything until after the hearing because when he went up to—it happened that Michael Brayer [phonetic] was doing that hearing—and when he went up after the hearing and he said Mr. Brayer [phonetic] I didn't speak now but this guy has rats running around his plant, he's got all these other things, I mean he went into great detail, and he said the guy is from the old country and in the old country it doesn't matter, but in this country it does. And the sausage products he's putting out are just contaminated. We had to close him down. So anyway, you're always welcome.



And you have the taxpayer advocate service, as I said, you know, I used to hold these hearings and I'd have all kinds of taxpayer complaints about the IRS because the IRS touches everybody and these days it's gone way down because of your good work. So we appreciate that too.

Now the serious business. If anybody who wants to offer comment, what we do, I'm recording this hearing now. It will be transcribed and put up on our web site, just so you know, but we accept anybody's testimony on any issue, so who do we have first, Nadine?

**NADINE PHILLIPS:** Jerome.

**MALE VOICE:** Jerome.

**JEROME BURKEL:** Where do you want me?

**MS. PHILLIPS:** Do you want him at the podium or just want him to stand up?

**MALE VOICE:** Well does the mic work? Or—whatever you're comfortable with.

**JEROME BURKEL:** I guess I'm comfortable either way. Can everybody hear me? Okay. I'm a small business owner from Northwestern Minnesota. Family company. We were incorporated in 1974. We're in the feed and grain business and we manufacture feed. We deal with a lot of agencies, USDA, FDA, AFIS [phonetic], customs and homeland security. We do an export business into Canada. The last three or four years have been extreme weather conditions in Northwestern Minnesota, along with areas of North Dakota. We were declared a disaster area and we applied for an SBA disaster loan. This is the package we sent them. This has come back to us twice, and the reason for it, and I will provide the committee here with the documentation on it, but the reason for this here is because they say they cannot process the application because of affiliation.

And what they, after a month of dealing with our congressman's office and their contacts at the SBA disaster center in Atlanta, they finally come across with the reg that says what affiliation is. I am the majority stockholder of the company, 52 percent. I have three sisters that each own 16 percent, which they inherited from my father when he passed away 22 years ago. Now the disaster office is saying that they won't process it because of this affiliation factor. We have the IRS people in here, what's your definition of a corporation? Do you have anything in IRS that has anything to do with affiliation? You do? And are those affiliates responsible for the corporation? Family members? They are not in day to day management of the company, they share no profits, and they receive no remuneration.

This has been all explained to the office. They fired the application back to us again requiring these affiliates, my three sisters,

to file financial statements and tax returns, which they don't care to do because they are not involved in the business. Financial statements provided by SBA for them to fill out states right at the top if you own 20 percent or more of the corporation or stock in the company or partnership or general partner, you have to provide this information, so under that you don't. I don't understand where they're coming from. I'm at a total loss here. They are not, these sisters of mine, the affiliates, are not responsible for the corporate taxes, the filing, the responsibilities, with any of the federal agencies. I, because I am the majority stockholder and controller of the company. Has been that way for many [Break in audio].

This is the issue that I brought. I talked to Pete on it last week. When I come back the second time we weren't getting answers. We decided to call some of our trade affiliations, Feed and Grain Association, touched on with the NFID office in Minneapolis. They forward me to Washington, got me in contact with a regulatory affairs guy there. He gave me Pete's name. I call Pete and talk to him. He informed me of this meeting today, first time we'd heard anything about it. There was nothing published, I don't know why. He invited me to come down. I registered with Nadine and here I am voicing my concerns.

I just wonder how many other small business owners that are corporations run into these same walls whether it is filing for an SBA loan, a disaster loan, or other programs. And they just give up, say the heck with it, it isn't worth it. I'm not one to lay down and die. I will not go away, and the more they irritate me the longer I'm going to hang around. I don't like to be obstinate and I'm not rude with anybody. I would appreciate this committee reviewing this matter and seeing what they can do about it, because I think it affects hundreds of thousands of businesses in this country.

It appears to me when you go, I looked through the web site and on regulatory for SBA they have [unintelligible] definition of a family corporation. To me it's either an S corporation or a regular corporation. I'd never heard of a family corporation in the IRS or any other federal thing. I would like that explained. To date nobody has been able to come forward and answer that. So hopefully this committee can get some answers going, and we would like to have our disaster loan processed. We feel that we deserve it. We suffered economic injury with the state of agricultural affairs in Northwestern Minnesota and I guess that's what I've got to say if anybody has any questions I would certainly try to answer them.

**MALE VOICE:** Thank you very much. Thanks for coming and thanks for sharing that with us. One thing that we do is we promise you an answer. It may not be the answer you want. It may not be the answer you expect, but we'll get you an answer and we'll take it in and we'll find out and we will get back to you and as I said I appreciate

you taking the time out of a busy schedule to come here and give us the facts and share with the others present what we've got.

**MR. BURKEL:** Just looking through my notes here and I found a couple of other things I should touch on. This application has been to Atlanta twice. Each time it's been returned to us there's been material missing out of it. My own personal financial statements and tax returns. [Unintelligible] my tax returns were combined with the corporate tax returns. As you can see, this application is [unintelligible] for the different sections. I wonder what they do with it. I got a comment here from another individual, another feed store that filed the same application and they fired his back asking for the tax information form and I'll provide you with this letter. Different forms. I personally watched him sign those forms and it was put into a packet just like this. The Atlanta office says they weren't in the packet. I can see where it would be missing if it was just loosely, but when it's bound together like that it should be able to stay together.

**MALE VOICE:** Well the difference between what's transpired to this date and what's going to happen when I go back to Washington is that I'll just go down to the fifth floor and talk to Herb Mitchell, who's in charge of disaster, rather than talk to some people that are in the Atlanta office, and get some action.

**MR. BURKEL:** But the Atlanta office has been very slow in providing information to our congressional representatives, to me personally. They won't respond. That's why we went to our congressman, to get help.

**MALE VOICE:** But that's why we're out here is to find out.

**MR. BURKEL:** Yep, mm-hmm. I appreciate it.

**MALE VOICE:** And one of the things that we always say and that we actually do is that we do not hold our agency higher than any other agency. We expect the same results out of the SBA as we expect out of any other federal agency whenever there's a concern, because our job and responsibility is small business and that's who we work for.

**MALE VOICE:** [Inaudible].

**MALE VOICE:** Sure.

**MALE VOICE:** Your company, is it an S corp, an LLC, a holding group?

**MR. BURKEL:** No, regular corp.

**MALE VOICE:** Regular corp, [unintelligible] corporation.

**MR. BURKEL:** Yep. Has been since 1974.

**MALE VOICE:** And you're incorporated under the State of Minnesota right?

**MR. BURKEL:** State of Minnesota, correct.

**MALE VOICE:** Okay. To clarify, you own 52 percent?

**MR. BURKEL:** I own 52 percent.

**MALE VOICE:** Your three sisters own 16 percent each.

**MR. BURKEL:** That's correct. For a total of 48 percent.

**MALE VOICE:** Okay. And on your, the requirements of the SBA loan they're saying that—the reason I ask this is that I've come across a couple of situations—you're saying that you, the SBA affiliation you have to own 20 percent of the company regardless of your position and then they want your financials and your tax statements.

**MR. BURKEL:** That's correct.

**MALE VOICE:** Or is a partner or a managing partner or a quiet partner, so to speak.

**MR. BURKEL:** Right.

**MALE VOICE:** [Unintelligible].

**MR. BURKEL:** [Unintelligible] or something [unintelligible].

**MALE VOICE:** Okay.

**MALE VOICE:** Thank you. Maybe—

**FEMALE VOICE:** We're waiting for Thomas Redcomb [phonetic]. He's apparently not on. The last one we have is one to be read.

**MALE VOICE:** No, that's, that was Company A [unintelligible].

**FEMALE VOICE:** No, Company B, the very last one.

**MALE VOICE:** Oh [unintelligible].

**MALE VOICE:** Didn't want to be identified?

**FEMALE VOICE:** No. Company B.

**MALE VOICE:** Company B. Okay. Let me validate that this is in fact [inaudible]. Okay. Company B begins submission of testimony. Thank you for the opportunity to provide input for the U.S. Small Business Administration's regulatory fairness hearing, Tuesday, June 28<sup>th</sup>. Company B has not been cited for any infractions, nor do we wish to lodge any complaints against our assigned division for environmental protection agency, region 8, Denver. We're providing input on behalf of our members, most of which are small businesses involved in our industry.

Our comments and input address three primary areas of concern. Regulatory compliance and enforcement issues for erosion and

sediment control, for the national pollution discharge elimination system, NPDS, disproportional penalties affecting small businesses, and burden of proof, regulatory compliance and enforcement issues for the erosion and sediment control for the national pollution discharge elimination system.

EPA has granted the North Dakota Health Department permission to administer the program in the state. Unfortunately, due to the lack of adequate staffing levels, the NDHD has not been able to properly enforce the [unintelligible] rule or educate small businesses on how to comply. Because of this the EPA region 8 inspectors have come to the Fargo, North Dakota, area to make their own assessment. Please note that the HPA of FM, Fargo North [unintelligible] industry as a whole support protecting the environment and feel that we have a moral and ethical responsibility to be good stewards. We are pursuing a change to the laws currently in place and are not asking for relief or elimination of the law per se. We respectfully want to state for the record, however, that we believe that the compliance and demands for the national storm water program are excessive, including required extensive records and paperwork, unreasonable or inequitable enforcement measures, and threatened large fines for small construction businesses.

Disproportional penalties affect small businesses. As it currently stands, most of the federal government's penalty structures outside of the internal revenue system where most are based on percentages and time are essentially the same for large and small businesses. Unfortunately, when penalties that were created based on a large company mentality are assessed on small businesses, the end result is often complete devastation for the small business. In other words, a penalty that is intended to be a deterrent to a business for doing something incorrectly is instead an overwhelming blow to small businesses from which many cannot recover. Small businesses are simply not on a level playing field with larger companies when it comes to having the financial resources needed to meet the government burdens placed on them. Yet these small businesses are exposed to essentially the same penalty structure as larger companies.

Our recommendation is to see the federal government ease the penalty structure on small businesses to get the risk, resources, and reward ratio more in line with that same ratio for larger companies. In short it seemed reasonable and appropriate for the federal government to take steps allowing small businesses to have a penalty structure that would be a slap on the hand and not a death blow in the event of an infraction. To accomplish this, step one, consider a two-tier penalty structure, one for large companies and a lesser scale penalty structure for small businesses.

Step two, consider exceptions for small businesses like the IRS has for certain tax laws. An example, a company below \$5 million

or \$10 million revenue thresholds has a lesser standard of compliance or may not have to comply.

Step three, consider that any such diminuous exceptions allow the small business to have a lesser recordkeeping and paperwork requirement.

Burden of proof. As it currently stands, the federal government, in example the EPA, seems to hold all the cards when it comes to assessing penalties and burdens on small businesses. In many scenarios the federal government gets to make a unilateral decision to assess a penalty and then leave it to the small business to fight the decision through appeals and other time consuming and costly processes. In such situations, the burden of proof ends up with the small business owner to prove that he or she is innocent. This clearly seems backwards; even in our judicial system a person is innocent until proven guilty. But in certain branches of the federal government you're guilty until and unless you have proven yourself innocent.

Our recommendation is the following. Step one, change the burden of proof to the government and not the small business. Step two, lessen the federal government's power to assess penalties without proving its case in damages first. Step three, require a higher level of proof that the federal government must meet before penalties are assessed. In example, prove damages before they can assess penalties. Step four, require the federal government to pay for the small business's costs of defending itself if the small business prevails in a case brought by the government.

Again, thank you for the opportunity to provide testimony in writing. We appreciate your consideration. Company B.

**MALE VOICE:** Thank you Jim.

**MS. MARSHALL:** [Unintelligible].

**MALE VOICE:** Of course. I was just standing up to recognize you.

**MS. MARSHALL:** Well thank you. First I'd like to say that, you know, [unintelligible] big hearings, and I think this is a good example of why I frequently do hearings is that we have ten regional offices, and our first effort is to have somebody from these regionals attend so that they know the [unintelligible] situation a lot better, can be more [unintelligible] than someone from Washington, and unfortunately somebody from our Denver office was not able to attend and that's why I'm [unintelligible]. But the last year the SBA did give [unintelligible] our attendance at hearing.

So I cannot respond to Company B specifically on the facts. But I do have a few things that I would like to say. And the first is that as I mentioned briefly before, EPA does have in effect a two-tier system for

large businesses and for small businesses. When congress enacted almost without exception every environmental law, they said that the penalty would be \$25,000 per [unintelligible] per violation, or up to that amount. Now that's tremendous, that's enormous. [Unintelligible] may not be able to pay that for a bad violation, but EPA has in place penalty policies because we recognize that we're not, you know, it's the rare exception in which we'd ever apply that penalty. And as I mentioned before, each of these small business, you know, each of these policies does specifically take into consideration that small businesses are in a completely different status than DuPont or MacDonnell Douglas or you know, these [unintelligible] billion dollar revenue...

So there is in effect a two-tier situation already, plus we have these policies under which small businesses come work with us and then [unintelligible] mode to, you know, not make it up to that point.

One of the things mentioned was that the penalties of structure were long and you know, a need for an even playing field. A penalty that the EPA imposes is based on two things. First, it's based on the harm of the situation that was caused. We do look at that; with a huge environmental harm, you know, that's more, going to have a bigger penalty than small environmental harm. That's just, there's no, it's not like a parking ticket, it's based on type of harm.

The second thing though that's very important is that [inaudible] environmental violation, or environmental regulations, can be extensive. Therefore a part of the penalty is the financial gain they had had by violating. And if you gain a lot of financial, you know, a lot of money because you didn't follow the control mechanisms or what have you, then you have put yourself above, you know, everybody else, and we do look at that.

Now in terms of soil erosion and sediment control, frequently that's an issue of did you put down straw bales. I mean there's not a lot of expenditure, and so the amount that we would be trying to recover in those situations [unintelligible] a lot less. But there is, you know, grading of some land [unintelligible] straw bales is not putting in air control handlers.

Anyway, the second thing is that our, I guess he mentioned four things, I covered [unintelligible] issue. Our, you know, [unintelligible] it's based on, you know, having done an inspection. It's, and finding a violation. We don't do it just based on whim. And there's, you know, we don't assume you're filthy but on the other hand there might be an explanation for what we found. But what we found is what we found.

Last is that he mentioned the state involvement in all of this. I would point out that most of the environmental laws, the enforcement of them is [unintelligible] the setting of standards is done at the state level. The way congress set up the laws is that you have a federal

government sets overall standards, but then states are delegated the authority to carry the programs out and may impose even more restrictive standards than the federal government, there's often a lot of confusion over that.

Anyway, with respect to the erosion and sediment control, it doesn't sound like much but one of the major problems we have in this country right now is there's a lot of development going on, residential, business, a lot of clearing of land, a lot of paving over. If you look at, you know, say somebody puts in a Wal-Mart. They, you know, level ground, they pave it over, [unintelligible] and during this process you get a lot of runoff, which is causing many environmental problems. It's filling up the streams with [unintelligible] which causes flooding. You have great reductions in, you know, you don't have as much [unintelligible] because you have so much sediment in the stream [unintelligible]. And it has become a very large nationwide problem with some fairly simple, you know, solutions to prevent that. So it's, I can't speak to the [unintelligible] thing because I'm not familiar with that.

I hope those comments are helpful and I hope that Company B does, you know, identify themselves and allow us to work with them.

**MALE VOICE:** Thank you Melissa. Fortunately because we're not the judge and jury in any of these cases, we're just the facilitator, Melissa will have another bite at this apple when we send the comment over to her officially and she can talk with the region 8 office in Denver and get their response to the questions that have been raised and we'll get those responses back to this company or organization, whatever it is.

**MS. MARSHALL:** Yeah.

**MALE VOICE:** So that they have an answer.

**MS. MARSHALL:** Yeah. We encourage people to do that. I mean, you know, [inaudible] they have an issue, you don't feel you're being heard, we'll work with you. Very simple.

**MALE VOICE:** Sure. Anyway. Is there anybody else who would like to offer a comment? Yes sir.

**KARL FRIGAARD:** I'm Karl Frigaard, I'm with the Northwest Community Action up in Badger, Minnesota. I work with several communities and several small businesses in my area. I serve Kitsen [phonetic], Marshall, Lake of the Woods, and Rosell Commons [phonetic]. I've seen several economic injuries [unintelligible] as Jerome alluded to going to SBA, and some of the pitfalls that I see with the current system in place if a business is in crisis and applying for an economic injury loan, they can't wait three months for an answer. They've got overdrafts, they've got finance charges, they've got banks



hounding them and every vendor's hounding them.

I can cite three examples that I know of in particular that their caseworker said oh you'll be settling for \$93,000. A week later, oh it's down to \$83,000. Today they're probably going to be getting \$63,000. Well that small business had in that course of three week conversation about a dozen calls from a dozen different vendors that they owed money to, and they're trying to schedule a repayment plan, and the SBA is saying we're going to give you \$93,000 at the beginning of the conversation when they settle for \$63,000 at the very end. So that's one of the things that I see as being detrimental [unintelligible] a fast turnaround on the economic injury loans because businesses are, you know, in trouble. They need to have answers quickly.

Evaluate the caseworkers that are out there working on those economic injury loans. Are they competent? Are they turning around loans in an expedient manner? And check out their caseloads. Maybe they're bombarded and over case loaded and [unintelligible]. I've also seen weather related damages to businesses that aren't really being evaluated and looked at. We've seen in the last two years weather conditions that would make most businesses cringe, from temperatures being in the low sixties throughout the whole summer where heating and cooling businesses would normally be installing air conditioning, they weren't getting service calls, and they weren't looked at as being economically injured because of weather conditions. We also have seen those same businesses being hit hard by our ill economy by not having service calls because our farmers aren't spending the money that they would on their equipment and their homes and their shops.

Also I'd look at SBA's policies on subordinating loans for small businesses to other loans. It can be kind of cumbersome for a small business that's trying to restructure debt with SBA, and also look at reducing the SBA's [unintelligible] fees so that it can be more competitive to make the businesses more competitive with their financing.

**MALE VOICE:** Thank you. Anyone else who would like to make a comment? If not we thank you for your time. We appreciate you being here. We will take what we've learned back to Washington and get answers. So we know that you're busy people, so let's get back to work. Thank you much.

[Crosstalk]

[END RECORDING]